REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

FERNANDEZ HOLDINGS, INC., Petitioner,	**CTA AC NO. 133** (Civil Case No. 35,672-14)
- versus -	**Members:**
CITY OF DAVAO AND HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
	Promulgated: JUL 2 1 2016

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10:15 a.m.

DECISION

CASANOVA, *J.*:

This is an appeal pursuant to Section 4(a)[1] Rule 8 of the Revised Rules of the Court of Tax Appeals, *via* the instant Petition for Review[2], filed on February 6, 2015. The Petition seeks to reverse and set aside the Orders dated October 15, 2014[3] and December 17, 2014[4], respectively, both rendered by the Regional Trial Court (RTC)-Branch 16 of the City of Davao upholding the assessment against Fernandez Holdings, Inc. for local business tax for the 3rd and 4th quarters of 2011,

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[1] **SEC. 4.** ***Where to appeal; mode of appeal.*** **–**

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[2] Docket, pp. 5-28

[3] RTC Records, pp. 126-138

[4] *Ibid.*, p. 163

on its gross receipts derived from cash dividends and interests for taxable year 2010 in the aggregate amount of Seven Hundred Sixty Thousand Nine Hundred Thirty Three and 49/100 Pesos (₱760,933.49).

Petitioner Fernandez Holdings, Inc. (FHI) is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[5] It may be served with notices and other Court processes through its counsel, Carag De Mesa Zaballero San Pablo & Abiera Law Offices, with office address at Suite 2606, 26th Floor, The Atlanta Centre, No. 31 Annapolis Street, Greenhills, San Juan City, Metro Manila.

Respondent City of Davao is a local government unit duly created by law whose address is located at City Hall Building, San Pedro Street, Davao City.

While, respondent Hon. Rodrigo S. Riola ("respondent City Treasurer") is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was he who issued the 0.55% local business tax assessment on the dividends and interests received by FHI for taxable year 2010.

Respondent City of Davao and respondent City Treasurer (Hereinafter shall be collectively referred to as "public respondents") may be served summons, notices and other Court processes at their respective offices at the City Hall Building, San Pedro Street, Davao City.

In 2010, petitioner received the amount of One Hundred Thirty Nine Million Two Hundred Twenty One Thousand Six Hundred Fifty and 65/100 Pesos (₱139,221,650.65), as dividends from its San Miguel Corporation (SMC) Preferred shares of stock and interest from its money market placements, computed as follows:

Nature of Income	Amount
Dividends from FHIS's SMC Shares	₱ 137,560,425.00
Interest Income from FHI's Money Market Placements	1,661,225.65
	₱ 139,221,650.65

[5] Par. 10, The Parties, Petition for Review, Docket, p. 7

On January 20, 2014, respondent City of Davao, through respondent City Treasurer, issued a Business Tax Order of Payment[6], assessing petitioner for its tax obligation of 0.55% local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements for the third and fourth quarters of 2011, in the amount of Seven Hundred Sixty Thousand Nine Hundred Thirty Three and 49/100 Pesos (₱760,933.49).

On March 21, 2014, petitioner filed with respondent City Treasurer its written administrative protest[7] on the said local business tax assessment.

In a letter[8] dated April 4, 2014, respondent City Treasurer responded by requiring petitioner to forward the proof of its payment of local business taxes before the protest may be resolved.

On April 24, 2014, respondent City Treasurer received a letter-reply[9] dated April 15, 2014, wherein petitioner argues that the requirement of payment under protest is invalid and unconstitutional for being inconsistent with Section 252 in relation to Section 195 of Republic Act (RA) No. 7160[10], as amended, which provides that payment under protest is required only for protests on real property tax assessments and not on other local taxes.

In response, respondent City Treasurer wrote a letter[11] dated May 5, 2014, citing Section 423 of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of the City of Davao", wherein it states that no protest shall be entertained unless the taxpayer first pays the tax. He further asserts that the said Section does not distinguish between real property and business taxes.

Thereafter, claiming inaction by respondent City Treasurer, petitioner then filed on June 9, 2014, a Petition for Review[12] with the RTC-Branch 16 of the City of Davao.

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[6] Annex "P-3", Petition for Review, pp. 43-46
[7] Annex "P-4", Petition for Review, pp. 47-54
[8] Annex "P-10", *Ibid.*, p. 117
[9] Annex "P-11", *Id.*, pp. 118-123
[10] "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" dated October 10, 1991
[11] Annex "P-12", Petition for Review, p. 124
[12] RTC Records, pp. 3-21

During trial, pertinent facts of the case were admitted, leaving only questions of law to be resolved by the RTC-Branch 16 of the City of Davao.

Accordingly, on October 15, 2014, the RTC-Branch 16 of the City of Davao rendered an Order[13], dismissing the Petition for Review based on the ground that petitioner is considered as a non-bank financial intermediary, since its primary purpose in its amended Articles of Incorporation resembles the definition of a financial intermediary as defined under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP). The *fallo* of said Order reads:

> "**FOR REASONS STATED**, the instant 'Petition for Review' filed by the petitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED.**"

On November 20, 2014, petitioner filed a Motion for Reconsideration[14] praying that the above Order be reversed and set aside, insisting that it is not engaged in the business of lending, investing, or trading securities either for its own account or for the account of others.

On December 17, 2014, the RTC-Branch 16 of the City of Davao issued an Order[15] denying petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, petitioner elevated the matter on February 6, 2015, to the Court of Tax Appeals (CTA), *via* the instant Petition for Review[16].

However, in the Resolution[17] dated February 24, 2015, this Court dismissed the said Petition for petitioner's failure to furnish the RTC-Branch 16 of the City of Davao and the adverse party with a copy of its

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[13] *Supra* No. 3
[14] RTC Docket, pp. 139-151
[15] *Ibid.*, p. 163
[16] *Supra* No. 2
[17] Docket, p. 170

Petition for Review pursuant to Sections 1 & 3,[18] Rule 42 of the Rules of Court.

On March 3, 2015, petitioner filed a Motion for Reconsideration (Of the Resolution dated 24 February 2015), praying that the Resolution dismissing its Petition be reconsidered and recalled on the grounds that petitioner had actually furnished the parties copies of its Petition for Review but, however, inadvertently failed to attach the proof of service to the Petition filed; and, that substantial justice merits relaxation of technical rules in the interest of justice.

In opposition thereto, public respondents filed on April 6, 2015, through registered mail, their Manifestation/Comment[19] asserting that they have not yet received the alleged copy of the said Petition.

Thereafter, on May 8, 2015, this Court promulgated a Resolution[20], granting petitioner's Motion for Reconsideration (Of the Resolution dated 24 February 2015) in view of its submission of the registry receipts to prove service to the RTC-Branch 16 of the City of Davao and respondent City of Davao. Nonetheless, petitioner was still ordered to furnish public respondents with a copy of the instant Petition for Review dated February 2, 2015.

On May, 27, 2015, petitioner filed a Compliance/Manifestation[21], stating that it personally served public respondents with copies of its

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[18] "**SECTION 1.** *How appeal taken; time for filing.*—A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (n)"

"**SEC. 3.** *Effect of failure to comply with requirements.*—The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

[19] Docket, pp. 187-190

[20] Ibid., pp. 192-193

[21] Id., pp. 194-196

Petition for Review, as evidenced by stamp of the RTC-Branch 16 of the City of Davao and the City Legal Office of the City of Davao.

On May 21, 2015, public respondents filed, through registered mail, their Comment[22] to petitioner's Petition for Review.

Thus, in the Resolution[23] dated June 23, 2015, this Court noted both petitioner's Compliance/Manifestation and Comment. The parties were then given thirty (30) days to file their respective memorandum, and further ordered the Branch Clerk of Court or the Officer-In-Charge of the RTC-Branch 16, City of Davao to elevate the entire original records of the case.

In a letter[24] dated July 16, 2015, the Clerk of Court V of the RTC-Branch 16 of the City of Davao, Atty. Jocelyn M. Alibang-Salud, transmitted the entire original records of the case in compliance with this Court's directive. On August 4, 2015, this Court noted said transmittal.[25]

On July 29, 2015, petitioner submitted its Memorandum[26] while public respondents failed to submit theirs as per Records Verification[27] dated August 14, 2015.

Accordingly, in the August 20, 2015 Resolution[28], the instant case was deemed submitted for decision.

The issues[29] raised by the parties for this Court's resolution can be summed up into the following:

> Whether the Court has jurisdiction over the present case considering that the tax assessment had allegedly become final and conclusive for petitioner's failure to pay the tax under protest by virtue of Section 423 of Ordinance No. 158-05, series of 2005.

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[22] Id., pp. 223-236
[23] Id., pp. 239-240
[24] Id., p. 241
[25] Resolution dated August 4, 2015, Docket, p. 244
[26] Docket, pp. 245-277
[27] Ibid., p. 279
[28] *Id.*, p. 280
[29] Arguments, Petition for Review, *id.*, p. 12

> Whether petitioner is liable for deficiency business tax of 0.55% for the 3rd and 4th quarters of 2011, imposed on the dividends and interests it received from SMC preferred shares of stocks and money market placements, respectively, for taxable year 2010.

In its appeal, petitioner claims that this Court has jurisdiction to entertain its petition since prior payment of tax is not a condition *sine qua non* for protest of business tax assessments under the Local Government Code. It continues that the requirement of payment under protest is present only in cases of real property tax assessmens and not that of local business tax. Petitioner also insists that, contrary to the findings of the court *a quo*, it is not a bank or a financial institution. It argues that before one is considered as a non-bank financial intermediary, the performance of "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others" should be on a regular and recurring basis, and not an isolated transaction. Furthermore, its Amended Articles of Incorporation expressly states that "it shall not act as an investment company or a securities broker and/or dealer", thus, petitioner is expressly prohibited from acting as an investment company or securities broker and/or dealer. As such, petitioner claims that its primary purpose is to be a holding company and not to engage in the business of investing or lending money or securities as a non-bank financial intermediary.

On the other hand, in their comment, public respondents assert that even though petitioner's Amended Articles of Incorporation contains a statement that it is expressly prohibited from acting as an investment company or securities broker and/or dealer, petitioner's business purpose, nonetheless, is wittingly broad enough to catch all the descriptive function of a non-bank financial intermediary. Thus, petitioner is deemed as a "non-bank financial intermediary or an investment company" by virtue of its investment and money placements in SMC. Finally, public respondents claim that the tax assessment had become final and conclusive since Section 423 of the 2005 Revenue Code of the City of Davao is a valid ordinance enacted by the Sanggunian Panlungsod of Davao, wherein it requires that before a protest may be entertained by the City Treasurer, the aggrieved party must first pay under protest the tax assessed; to which, petitioner failed to comply.

After due consideration of the arguments presented by the parties, this Court finds no merit in the instant petition.

The Court has jurisdiction over the present case regardless of failure to pay the tax under protest as per Section 423 of Ordinance No. 158-05, series of 2005.

Settled is the rule that the jurisdiction of a court to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implications.[30] A characteristic of all procedural rules is adherence to the precept that they should not be enforced blindly, especially if mechanical application would defeat the higher ends that animate our civil procedure — the "just, speedy and inexpensive disposition of every action and proceeding"[31].

Parenthetically, Article X, Section 5 of the 1987 Constitution affords local government units the power to create its own sources of revenues *via* taxes, fees, and charges, *viz*:

> "**Sec. 5.** Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

For this reason, Congress enacted Republic Act (RA) No. 7160[32], otherwise known as the "Local Government Code (LGC) of 1991", which meant to decentralize government powers, authority, responsibilities and resources from the national government to the local government units, "to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals."[33]

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[30] Philippine Ports Authority vs. Fuentes, G.R. No. 91259, 16 April 1991; *citing* Victorias Milling Co., Inc. vs. CTA, G.R. No. 66381, February 29, 1984
[31] *See* Section 6, Rule 1, 1997 Rules of Civil Procedure
[32] Which took effect on January 1, 1992
[33] Alejandro B. Ty, et. al. vs. The Hon. Aurelio C. Trampe, et. al, G.R. No. 117577, December 1, 1995

In the instant case, respondent City Treasurer assessed petitioner for deficiency local business tax on the dividends and interests it received for taxable year 2010 under Section 143 (f) of the LGC of 1991, as amended, *viz*:

> "**Section 143. Tax on Business. —** The municipality[34] may impose taxes on the following businesses:
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> *x x x*
>
> (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.
>
> *x x x"*

On March 21, 2014, petitioner filed a protest contesting the legality of the said assessment in accordance with Section 195 of the LGC of 1991, as amended, which provides that:

> "**Section 195.** *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.** The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the

[34] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991

> taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable." *(Emphasis Ours)*

However, petitioner's protest was not acted upon by respondent City Treasurer because he insisted that petitioner failed to comply with Section 423 of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of the City of Davao", which requires paying the tax assessed first before filing a protest, *viz*:

> "**SECTION 423.** *Payment Under Protest.* — No protest shall be entertained unless the taxpayer first pay the tax. There shall be annotated on the tax receipts the words 'paid under protest.' The protest in writing must be filed within thirty (30) days from payment of the tax with the City Treasurer who shall decide the protest within sixty (60) days from receipt."

Hence, the question, now, is whether the respondents' business tax assessment has become final by virtue of petitioner's failure to pay the tax under protest and, thus, may not anymore be the subject of an appeal.

This Court rules in the negative.

While it is true that a local government unit has autonomy to levy taxes, fees, and charges; such constitutional mandate, however, is subject to guidelines and limitations as Congress may provide.[35]

As gleaned in the afore-quoted Section 195 of the LGC of 1991, as amended, the **only requirement imposed by law** is that the protest must be filed within sixty (60) days from the receipt of the notice of assessment; otherwise, the assessment shall become final and executory. Nowhere was it stated therein that a taxpayer is required to first pay the tax assessed before the local treasurer may act on the said

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[35] Section 5, Article X of the 1987 Constitution

protest. As a matter of fact, even Article 285[36] of Rule XXX of the Rules and Regulations Implementing the Local Government Code of 1991[37] do not require any prior payment of the tax assessed before the local treasurer may act on the taxpayer's protest.

Conversely, the only time that the LGC of 1991, as amended, requires payment under protest of a tax is under the circumstances mentioned in Section 252[38] of Title II of the said code, which specifically pertains to Real Property Taxation. The same goes with the Rules and Regulations Implementing the Local Government Code of 1991, where payment under protest is only found under Article 343[39] of Rule XXXI which, likewise, speaks of Real Property Taxation. Ostensibly, the Local Government Code being the enabling law for the local legislative body, any resolutions enacted by the local government unit concerned must conform to the provisions of the code. Basic is the rule of statutory construction that when the law is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted

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[36] "**ARTICLE 285.** *Protest on Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge the amount of deficiency, the surcharges, interests, and penalties. **Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing.** If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. If the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer.

The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty-day period prescribed in this Article within which to appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable." *(Emphasis Ours)*

[37] Enacted February 21, 1992

[38] "**Section 252.** *Payment Under Protest.* –

(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

xxx xxx xxx" (Emphasis Ours)

[39] "**ARTICLE 343.** *Payment Under Protest.* — (a) **No protest shall be entertained unless the taxpayer first pays the tax**. There shall be annotated on the tax receipts the words paid under protest. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial or city treasurer, or municipal treasurer, in the case of a municipality within MMA, who shall decide the protest within sixty (60) days from receipt.

xxx xxx xxx" (Emphasis Ours)

interpretation.[40] As held by the Supreme Court in the case of *Gedeon G. Quijano, et al. vs. The Development Bank of the Philippines, et al.*[41]:

> "*x x x* We cannot see any room for interpretation or construction in the clear and unambiguous language of the above-quoted provision of law. **This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible**. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed." *(Emphasis Ours)*

Since the LGC of 1991, as amended, provides the remedy of protest without the need to first pay the business tax assessment, public respondents should not supply any additional requirements that would prejudice the taxpayers concerned. To sustain public respondents' stance would make a dangerous precedent wherein tax protests will be all for naught. It will create an undesirable scenario where a local government unit may disregard ruling on a current tax protest and, come next year, issue another deficiency assessment wherein taxpayers would again have to pay under protest. A yearly tax protest means yearly payment of the over-assessment thereby rendering tax protest mechanism inutile.

While this Court is ever-mindful that the local government unit's power to tax is the most effective instrument to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people; still, adherence to the Local Government Code is needed being the enabling law for the local legislative body. As the maxim goes, *intentio inservire debet legibus, non leges intentioni*[42]

Petitioner is liable for deficiency business tax of 0.55% for the 3rd

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[40] Francisco I. Chavez vs. Judicial and Bar Council, et al., G.R. No. 202242, July 17, 2012
[41] G.R. No. L-26419, October 16, 1970
[42] "Intentions ought to be subservient to the laws, not the laws to the intention"

and 4th quarters of 2011, imposed on the dividends and interests it received from SMC preferred shares of stocks and money market placements, respectively, for taxable year 2010.

Generally, local government units are prohibited from levying their taxing powers on income tax, except when levied on banks and financial institutions.[43] Since, obviously, petitioner is not a banking institution, this Court is left with the question of whether petitioner may be considered as a financial institution.

Incidentally, Section 131 (e) of the LGC of 1991, as amended, and as adopted by the 2005 Revenue Code of the City of Davao under Section 5 (b3), defines banks and other financial institutions as follows:

> "**Section 131.** *Definition of Terms.* - When used in this Title, the term:
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> *x x x*
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> (e) *'Banks and other financial institutions'* **include non-bank financial intermediaries**, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, **as defined under applicable laws, or rules and regulations thereunder**;
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> *x x x" (Emphasis Ours)*

As gleaned above, Section 131 (e) defines banks and other financial institutions by giving examples of such rather than providing a concrete description of its definition. The said section further qualifies its definition by including the phrase *as defined under applicable laws, or rules and regulations thereunder*. Clearly, reference to other definitions of the same import under applicable laws, or rules and regulations may be resorted to.

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[43] Section 133 (a), LGC of 1991

Since financial institutions include, by reference, non-bank financial intermediaries,[44] Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions[45] defines financial intermediaries in this wise:

> "**§ 4101Q.1** ***Financial intermediaries.*** *Financial intermediaries* shall mean persons or entities whose **principal functions include** the lending, **investing or placement of funds or evidences of indebtedness or equity** deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
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> ***Principal*** **shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant**, as distinguished from secondary or incidental.
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> ***Functions*** **shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out.** The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.
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> *x x x" (Emphases and Underscoring Ours)*

Verily, financial intermediaries are those whose principal functions include, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others. Thus, to determine whether petitioner's business includes the principal function of a financial intermediary, reference to petitioner's primary purpose, as indicated in its Amended Articles of Incorporation[46] is necessary, *viz*:

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[44] *Ibid.*
[45] Q Regulations
[46] Annex "P-9", Petition for Review, pp. 104-116

"PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay thereof in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation." *(Emphasis Ours)*

From the foregoing, the scope of petitioner's primary purpose is extensive enough to cover most of the principal functions of a financial intermediary. Bearing in mind that the nature of petitioner's business, which consists solely in owning a substantial number of shares of stock and equity in SMC, to which it regularly receives dividends in millions of pesos and, thereafter, reinvests it in money placements in the same company to maximize its profit, petitioner is clearly deemed to be engaged in the business of investing or placement of funds or evidences of indebtedness which is well within the purview of a financial institution. In fact, and as correctly held by the court *a quo*, "even an obtuse legal mind can conclude that the scope of petitioner's primary business purpose in its Amended Articles of Incorporation is wittingly or unwittingly broad enough to **catch all** the descriptive functions of a Financial Intermediary."

Moreover, this Court also finds no merit in petitioner's allegation that to be considered a financial intermediary, a person must perform any of the functions stated in the definition given on a regular and recurring, not on an isolated basis.

Having been organized as a stock corporation, petitioner is presumed to have been organized with the end in view of earning a profit. The fact that petitioner's primary purpose in its Amended Articles of Incorporation provides that petitioner was organized to purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign; and, coupled by the fact that petitioner has a continuing huge chunk of investment in shares of stocks of SMC to which it regularly receives millions of pesos in dividends and reinvests them in money placement in the same company to attain maximum profit negates petitioner's allegation that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Also, the fact that petitioner has no other business, except its investment in SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit received by petitioner is a direct consequence of its business engagements and not just mere incidental thereto.

In the same way, petitioner, further, insists that its amended articles of incorporation prohibit it from acting as an investment company of securities broker and/or dealer. The primary purpose for which petitioner was formed expressly states that "*x x x* provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation." As such, petitioner should not be classified as a financial institution.

This Court is not convinced.

The self-imposed prohibition in the last phrase of petitioner's primary purpose in its Articles of Incorporation does not guarantee that petitioner will not engage in any of the said activities. Verily, by actually

engaging in the business of stock investment and money market placements in SMC, the said proviso was negated and should, therefore, be disregarded. As held in the assailed Order dated October 15, 2014 by the court *a quo*:

> "While the primary purpose of Petitioner appears to set a qualification or condition that: **'provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.'**, said ***proviso*** in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral ng Pilipinas for non-ba*[n]*king financial intermediaries, per second paragraph of **Section 4101Q.1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS,** to wit:
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> 'Non-banking financial intermediaries shall include the following:
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> (1) **A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association**.
>
> *x x x*'
>
> Petitioner cannot hide under the cloak of their evasive proviso, because Petitioner is glaringly and clearly under the category of a Financial Intermediary." [47]

Accordingly, based on the foregoing definition and petitioner's acts of investing in equity securities, holding of assets consisting of shares of stocks and placement of funds in SMC on a regular and recurring basis explicitly affirms the conclusion that petitioner is a non-

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[47] At page 12, Order, RTC Records, p. 137

bank financial intermediary whose income may, therefore, be subjected to business tax under Section 143 (f) of the LGC of 1991, as amended.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice